

WISCONSIN TAX BULLETIN

was reported in the October issue of the Wisconsin Tax Bulletin. Contrary to the last sentence in that report, the taxpayer *has* appealed this decision.

TAX RELEASES

"Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAXES

New optional state sales tax tables for 1978

In 1978, the Internal Revenue Service revised the optional state sales tax tables for use in preparing 1978 federal income tax returns. The income brackets have been revised and have been extended to \$40,000, and a new method of computation of sales tax allowable for incomes over \$40,000 is provided.

These tables are for use by persons who claim an itemized deduction for sales taxes but do not keep records of sales taxes paid during the year. The tables are based on taxpayers' adjusted gross income plus other items which, though not taxable, increase spendable income (e.g., social security, veterans' and railroad retirement benefits; workers compensation; untaxed portion of long-term capital gains; disability income exclusion; dividend exclusion; unemployment compensation; and public assistance payments).

The revised tables will apply in the same manner for Wisconsin income tax purposes as they do for federal purposes. The revision was not the result of new federal legislation. Rather, it was accomplished by an Internal Revenue Service interpretation of an existing law.

SALES TAX

I. Sales by governmental units

Sales by the State of Wisconsin, by any state agency, and by governmental units within this state (such as counties, cities, towns and villages) are generally subject to the Wisconsin sales tax.

Taxable receipts of governmental units include the gross receipts from furnishing admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, skating fees

and park shelter house fees). It also includes any reservation fee paid by a user of a recreational facility to assure that the facility is available when it is needed.

Fees for instruction in a sport or hobby are not subject to the tax. This includes fees charged by a municipality for instruction programs such as swimming, soccer, dancing, chess, physical fitness, archery, yoga, golf, tennis, art and drawing.

Library fines and charges to borrowers for not returning a library's property, either on time or not returning the property at all, are not subject to the sales or use tax.

For additional information on the sales and use tax status of sales by governmental units, see administrative rule Tax 11.05, entitled "Governmental units".

II. Sales to governmental units and schools

Sales of tangible personal property or taxable services which are purchased directly by and used by the federal or state government, by municipalities or by public schools are not subject to the sales tax. Such sales do not have to be supported by exemption certificates if a copy of the purchase order received from the exempt entity is retained by the seller. However, sales to employees of these entities are taxable, even though the organization may subsequently reimburse the employee for the expenditure.

For additional information on the sales and use tax status of such sales, see administrative rule Tax 11.03, entitled "Elementary and secondary schools and related organizations".

III. Sale of a business or business assets

The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. The tax applies if business assets are sold as a disposition of surplus assets of a continuing business or if they are sold in a single transaction at the time of termination of the business. Tax also applies if such assets are sold piecemeal whether as part of a continuing business or upon termination. The tax does not apply to merchandise inventory purchased for the purpose of resale in the regular course of the purchaser's business.

A person may qualify for the "occasional sale" exemption on such sales of business assets if that person delivers the seller's permit to the Department for cancellation prior to the disposition of the assets. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the Department since it is a violation of the law to continue regular business operations without a permit. A permit holder may deliver the seller's permit to the Department for cancellation in any one of the following ways:

1. Permittees may personally deliver their seller's permit to a representative of the Department's Income, Sales, Inheritance and Excise Tax Division located in any one of the Divi-

sion's offices during regular office hours. The Department shall presume the permit was received at 12:01 a.m. on the day it is received.

2. The seller's permit may be mailed to the Department (P.O. Box 8902, Madison, 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, provided the envelope and its contents are actually received by the Department. If the retailer desires assurance that the Department has received the permit, the retailer may wish to send the permit by certified mail, return receipt requested.

3. If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to send in the actual seller's permit.

Although the permit may be deemed to have been delivered and canceled on the postmark date, cancellation cannot be effective prior to the postmark date.

If the permit is delivered to the Department for cancellation, the person immediately qualifies for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. (See *Three Lions Supper Club, Ltd. vs. Wisconsin Department of Revenue* (1976), 72 Wis. 2d 546.) The person does not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

The fact that a business ceases operations and no longer conducts its day to day activities of selling tangible personal property or taxable services does not result in the automatic cancellation of a seller's permit. A registrant operating as a seller is directed by s. 77.52 (12), Wis. Stats., to ". . . forthwith surrender his permit . . ." when the registrant ceases to operate as a seller. If the registrant does not surrender the permit at that time, the registrant does not qualify for the occasional sale exemption until the permit is surrendered to the Department for cancellation.

For additional information on this topic, see administrative rule Tax 11.13, entitled "Sale of a business or business assets".

IV. Sale of sole proprietor's nonbusiness assets

The Department is in the process of adopting a revision to rule Tax 11.10 ("Occasional sales") to clarify its acceptance of the Tax Appeals Commission's holding in *James E. Basler vs. Department of Revenue* (see summary of this case under "Report on Litigation" in this Bulletin).

In the proposed new Tax 11.10 (6) (e), exempt occasional sales are defined to include

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sales of tangible personal property by a sole proprietor who holds (or is required to hold) a seller's permit, if the property is not or has not been used in the course of the person's business activities and is not the type of property sold in the course of conducting the business activities. However, all tangible personal property sold by a corporation or partnership holding (or required to hold) a seller's permit shall be considered used or sold in the organiza-

tion's business activities and is taxable.

Examples of how the new rule will apply include the following: (1) Taxpayer is a sole proprietor and a service station operator who obtained a seller's permit for the purpose of selling cigarettes and repairing motor vehicles; taxpayer sold a refrigerator and stove used in the taxpayer's residence; the gross receipts from the sale of the refrigerator and stove are not subject to the sales tax. (2) Taxpayer in

the prior example sold a desk and refrigerator which were used in the service station's business activities; the gross receipts from the sale of these two items are subject to the sales tax.

Although the revision to the rule may not be adopted for several months, the Department has been following the new policy contained in Tax 11.10 (6) (e). This new policy applies to all future sales and to all sales in prior periods which are open to adjustment under the statute of limitations in s. 77.59, Wis. Stats.